

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GRAHAM FORSHER, on behalf of himself
and all others similarly situated,

Plaintiff,

- against -

THE J.M. SMUCKER CO.,

Defendant.
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MEMORANDUM & ORDER

15 CV 7180 (RJD) (MDG)

DEARIE, District Judge:

Plaintiff brings this proposed class action on behalf of all consumers who purchased defendant The J.M. Smucker Co.’s “Natural” peanut butter products between December 16, 2011, and November 9, 2015. Plaintiff alleges that defendant’s branding of these products as “Natural” is deceptive, misleading, and false because the products contain sugar, which, in the United States, is often manufactured using sugar beets derived from genetically-modified seed varieties. Defendant moves, *inter alia*, to dismiss or stay the case pursuant to the primary jurisdiction doctrine because the Food and Drug Administration (“FDA”) is currently reviewing the issue at the core of this matter—the proper use of the term “natural” on food labels.

For the reasons stated on the record during oral argument on October 13, 2016, as well as the reasons articulated in Magistrate Judge Go’s Order dated September 30, 2016, ECF No. 30, the Court orders that this case be stayed pending the FDA’s rulemaking process. The Court does so with the hope and expectation that the FDA will complete its process expeditiously and enable this matter—and others around the country—to proceed in a timely fashion. Defendant’s motion to dismiss, ECF No. 24, is denied, without prejudice to defendant renewing the motion if and when the present stay is lifted.

The parties are directed to provide the Court with a joint status report no later than March 1, 2017. If there is any material development with respect to the FDA's rulemaking process in the interim, however, the parties are directed to notify the Court promptly.

Plaintiff also asks the Court to permit limited discovery at this time on the question of whether defendant's products were, in fact, prepared using sugar beets derived from genetically modified seed varieties, rather than sugar cane or other varieties of sugar beets. Plaintiff's request is denied. Such discovery may proceed if and when the present stay is lifted.

SO ORDERED.

Dated: Brooklyn, New York
October 18, 2016

s/ RJD

RAYMOND J. DEARIE
United States District Judge